

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 00-0259 ST
STATE GROSS RETAIL TAX
For Years 1997 AND 1998**

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ISSUES**I. State Gross Retail Tax – Imposition**

Authority: 45 IAC 2.2-5-16

Taxpayer protesting assessment of tax on taxpayer's purchase of returnable containers.

STATEMENT OF FACTS

Taxpayer sells bottled water in returnable containers. Taxpayer purchases the filled containers from a supplier, paying for both the contents and the container, then sells the water, in the returnable container, to consumers. When consumers return the containers, taxpayer refunds the deposit amount to the customer and returns the empty containers to the supplier for refill. For subsequent refills, the taxpayer only pays the supplier for the water within the containers, having already purchased the container. Taxpayer was not paying use tax on the initial purchase of the containers; rather taxpayer was charging the customers sales tax on both the contents of the containers and the deposit amount. Department has assessed tax on taxpayer's purchase of the returnable containers.

I. State Gross Retail Tax – Imposition**DISCUSSION**

45 IAC 2.2-5-16 addresses returnable containers; it states in relevant part:

- (a) The state gross retail tax shall not apply to sales of nonreturnable wrapping materials and empty containers to be used by the purchaser

as enclosures or containers for selling contents to be added, and *returnable containers containing contents sold in a sale constituting selling at retail* and returnable containers sold empty for refilling.

....

- (c) General rule. The receipt from a sale by a retail merchant of the following types of tangible personal property are *exempt from state gross retail tax*:

....

(2) *Deposits for returnable containers received as an incident to a transaction of a retail merchant constituting selling at retail.*

....

- (d) Application of general rule.

....

(3) Returnable containers sold empty. To qualify for this exemption, the returnable containers must be resold with the purpose of refilling. *The sale of returnable containers to the original or first user thereof is taxable.*
(emphasis added)

....

Essentially taxpayer was shifting the incidence of the tax from taxpayer's purchase of the container to the transaction with taxpayer's customers. As 45 IAC 2.2 -5-16 requires, the tax is not applied to deposits on transactions of a retail merchant, but rather to the sale of the returnable containers to the original user, which is taxpayer. 45 IAC 2.2-5-16 does not permit the taxpayer to transfer responsibility for this tax from taxpayer to taxpayer's customers.

FINDINGS

Taxpayer's protest is denied.